

BEFORE THE
NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the Commission, on its)
own motion, seeking to amend Title 291,)
Chapter 7, Transmission Lines Rules)
and Regulations, to adopt rules)
regarding wires crossing any railroad)
track at public highway crossings in)
the State of Nebraska in accordance)
with NEB. REV. STAT. §§ 75-702 to)
75-724.)

Rule & Regulation No. 170

**COMMENTS OF THE
NEBRASKA TELECOMMUNICATIONS ASSOCIATION**

By Order entered August 28, 2007, the Commission seeks comments to proposed rules to amend Title 291, Chapter 7, Transmission Lines Rules and Regulations, in order to adopt rules regarding wires crossing any railroad track at public highway crossings in the State of Nebraska in accordance with NEB. REV. STAT. §§ 75-702 to 75-724. The proposed rules are attached to the Commission's Order entered on August 28, 2007. The Commission Order instructs interested parties to file comments on or before 5:00 p.m. on October 12, 2007. The Nebraska Telecommunications Association ("NTA") sought a 30 day extension for the deadline for the submission of comments by letter dated October 3, 2007. By Order entered October 10, 2007, the Commission granted the request for the extension, and the comments are now due on or before November 14, 2007. In response to the Commission Orders entered on August 28, 2007 and October 10, 2007, the Nebraska Telecommunications Association submits the following comments.

The NTA has reviewed the comments on the appendix attached to the Commission's Order of August 28, 2007. Without going into great detail, the time lines under the proposed rules are too lengthy. For example, a contested crossing agreement could take up to eight months after an entity gave notice of its intent to cross a railroad track at a public highway.

Even an expedited contested proceeding would likely take four to five months to complete. These time lines force those entities seeking to cross railroad right of ways at a public highway to be unable to respond timely to new customers or existing customer requests for additional services.

The Commission's draft rules contain some provisions that would appear to be unnecessary. For example, the filing of the notice of crossing with the Commission under Proposed Rule 003.03 would seem to be premature unless a dispute between the railroad and the crossing entity develops. Likewise, Proposed Rule 003.05 provides for the filing of all wire crossing agreements even if the crossing entity and the railroad reach agreement on the terms of the crossing agreement. Commission oversight of the terms for contractual agreements negotiated between the parties appears unnecessary.

The NTA would urge the Commission to call on the parties to this rule making with the engineering expertise to develop form exhibits contemplated by NTA Proposed Rules 003.02, 003.02A and 003.02B. The use of standard forms developed in this rule making will lead to greater uniformity and continuity in the data required to initiate a rail crossing agreement.

The NTA has prepared a redlined set of proposed rules for the Commission's consideration. The NTA draft rules propose a process which is designed to expedite the crossing of railroad right of ways, while at the same time, protecting the railroad's interest in the safety of its track. Attached as Appendix A is the NTA proposed rules which the NTA would urge the Commission to adopt. The rules provide for an expedited process and for reimbursement to the railroad of reasonable costs incurred.

WHEREFORE, it is respectfully requested that the Commission give consideration to the attached proposed rules and republish the attached rules and timely proceed with the rule making.

DATED this 12th day of November, 2007.

Respectfully submitted,

NEBRASKA TELECOMMUNICATIONS
ASSOCIATION

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RULE AND REGULATION #170

APPENDIX

Amendments to Nebraska Administrative Code, Title 291, Chapter 7, Transmission Lines Rules and Regulations

Insert the following new section.

003 TRANSMISSION LINES AND WIRES CROSSING RAILROAD TRACKS AT PUBLIC HIGHWAYS:

003.01 General: This section applies to all transmission lines and wires crossing railroad rights-of-way at public highways within the state. Nothing in this section shall be construed to reduce or negate the requirements and obligations pertaining to transmission lines subject to the provisions of Section 002.

~~003.02 Procedures for Negotiation and Approval of Agreements: Upon receiving a request to place any wire across any railroad track at a public highway, a railroad and the entity requesting crossing may negotiate and enter into a binding wire crossing agreement. The railroad and the crossing entity shall have sixty (60) days from the receipt of the request for crossing to voluntarily negotiate a binding agreement. The agreement shall include a detailed schedule of terms, conditions and charges. The agreement shall be submitted to the Commission pursuant to Section 003.05.~~

003.02 Notice and Exhibit: Anytime an entity intends to construct a crossing across railroad right of way, the crossing entity shall submit to the railroad a notification of intent to construct along with a specification exhibit that shows the location of the crossing and the railroad's property, tracks, and wires that the crossing entity's facilities will cross. The notice and exhibit shall be submitted to the railroad by certified mail, return receipt requested. The one-time standard crossing fee of \$750.00, unless otherwise agreed to by the railroad and the crossing entity, shall accompany the notice and exhibit. The crossing entity shall use its best efforts to submit the specification exhibit on a form provided or approved by the Commission. The specification exhibit constitutes the crossing entity's warranty that the crossing entity's facilities that are the subject of the exhibit will be constructed and installed as shown on the exhibit.

003.02A Exhibit Overhead Wire Line Crossings: For overhead wire line crossings, the specification exhibit shall contain, at a minimum, the location of the poles supporting the crossing span and adjoining spans on each side of the crossing span on the proposed facilities; the number, kind, and size of wires; and the clearance between the facilities and any existing railroad tracks, wires, or fiber-optic lines.

003.02B Exhibit Underground Crossings: For underground crossings, the specification exhibit shall contain, at a minimum, the number, kind, and size of

wires, pipes and conduit and casing to be used, the commodity conveyed, and the depth to which the crossing entity's facilities will be placed below the base of the railroad track and at other locations on the right of way. Multiple wires to be contained within a single conduit, may be combined on a single exhibit and notice of intent to construct.

~~003.03 Notification of Commission: Within five (5) days of submitting a request to a railroad for negotiation of a wire crossing agreement pursuant to Section 003.02, the crossing entity shall notify the Commission that a request for a wire crossing was submitted.~~

003.03 Authorization to Commence Construction: After 35 days from the mailing of the notice, specification exhibit, and fee, the crossing entity, absent a claim of special circumstances or objection from the railroad that the information contained in the specification exhibit is inadequate or incomplete, shall be deemed to have received authorization to commence construction of the facilities that are the subject of the specification exhibit. In the event the crossing entity does not commence construction within 120 days from the mailing of the notice or any changes to the specification exhibit, whichever is later, the notice shall expire and the fee may be retained by the railroad. If the crossing entity subsequently desires to proceed with construction of the facilities subject to the notice, the crossing entity must again comply with the notice, specification exhibit, and fee requirements of these rules.

~~003.04 Failure to Reach AgreementRailroad Objection; Hearing: If the railroad and crossing entity are unable to negotiate a bindingobjects to the wire crossing agreement by mailing its written objection to the crossing entity and the Commission within sixtythirty-five (6035) days as provided under Section 003.023, either party may petition the Commission, requesting a hearing on the disputed terms, conditions and charges of the wire crossing agreement.~~

003.04A Duties of Parties Requesting Hearing: A party that files a petition for hearing under Section 003.04this Section shall do so within ten (10) days of receipt of the objections from the railroad and shall include all relevant documentation concerning the unresolved issues and the position of the petitioning party with respect to those issues.

003.04B Notice of Petition: A party that submits a petition for hearing under this Section 003.04shall serve a copy of the petition and any other documentation on the other party or parties not later than the day on which the Commission receives the petition for hearing.

003.04C Opportunity to Respond: The non-petitioning party under this Section 003.04shall respond to the petition and provide any relevant documentation concerning the unresolved issues and the position of the non-petitioning party with respect to those issues within fifteen (15) days after service of the petition.

003.04D Action of the Commission:

003.04D1 The Commission shall limit its consideration of any wire crossing dispute to the issues set forth in the petition and in the response filed under this Section ~~003.04C~~. The Commission may require the parties to provide such information as may be necessary for the Commission to reach a decision on the unresolved issues.

003.04D2 Upon petition for hearing by a party to the wire crossing dispute the Commission shall set a hearing date not later than ~~ninety~~thirty (~~90~~30) days from the date of the petition except for good cause shown. In no event shall a hearing be set later than ~~six~~sixty (~~60~~660) ~~months~~days from the date of the petition. The Commission shall have thirty (30) days from the date of hearing to issue an order resolving each issue set forth in the petition and the response with written findings and opinions. In determining the terms, conditions and charges, the Commission shall consider whether such terms, conditions and charges are fair, just and reasonable and in the public interest.

~~003.05 Submission of Agreement to Commission: Any wire crossing agreement adopted by negotiation shall be submitted to the Commission. The Commission shall have thirty (30) days from the date of filing to approve or reject the agreement or the agreement will be deemed approved. The Commission may reject a wire crossing agreement if it finds that the wire crossing agreement is not in the public interest. If the Commission rejects the wire crossing agreement, it shall conduct a hearing and issue an order determining the terms, conditions and charges of the wire crossing agreement.~~

003.065 Public Highway Defined: For purposes of this Section, Public highway shall mean any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

003.06 Eminent Domain: Nothing in these rules or regulations are intended to or shall limit in any way any right of eminent domain any entity might otherwise have under Nebraska law.

003.07 Appeals: A party seeking to obtain reversal, modification, or vacation of an order entered by the Commission pursuant to this Section may appeal such order in accordance with the state's Administrative Procedure Act.